Supreme Court of the United States

SITTING IN EQUITY.

October Term, 1920.

No. 21. Original.

THE STATE OF OHIO,

Complainant,

vs.

THE STATE OF WEST VIRGINIA,

Defendant.

BRIEF FOR PLAINTIFF ON QUESTION OF TIME FOR FINAL HEARING AND ARGUMENT.

DEFENDANT'S MOTION.

The State of Ohio stands ready to conform to the suggestions and orders of the court with reference to the

second, third and fourth branches of the defendant's motion. The first branch of defendant's motion, to wit:

> 1. "To set down this cause for final hearing and argument at the earliest practicable day in the October term, 1921,"

is, in view of the status of the record, its length and intricacy, and the character of the legal questions involved, not allowing sufficient time for preparation.

TAKING OF TESTIMONY.

For the purpose of taking the proofs, this cause and cause No. 20 Original—Pennsylvania vs. West Virginia—were consolidated. The order of consolidation, moved for by the plaintiff states, also contained approval of the agreement among the States involved that the ultimate date for the conclusion of taking the proof would be May 1, 1921. By reason of the States of Ohio and Pennsylvania taking their evidence in chief through the summer months or vacation period of 1920 the taking of proof was completed by May 1, 1921.

STATUS OF THE RECORD.

The printing and binding of the approximate fifteen hundred pages of the record, exclusive of exhibits, is unfinished. The printing of the 124 exhibits, many of which are long and involved and will constitute in excess of 500 pages of the record, is just beginning. Therefore, the record complete will not be available to counsel before the middle or last of June prox.

NECESSARY TIME FOR BRIEFING.

The work of analyzing this long and intricate record and the making of findings of fact in the first instance, and stating the law is to be assumed by the plaintiff. If the briefs for the plaintiff are to be proportionate to the character of the questions involved and helpful to the court to the extent they should be, a reasonable time must be allowed for the preparation thereof. We respectfully submit that for the preparation of its opening brief plaintiff should be allowed at least three months time, to begin at the close of the summer vacation or September 15. Learned counsel for the State of West Virginia do not minimize this task.

As if in acknowledgment that the plaintiff states had been diligent in "speeding the causes" the motion requesting the unreasonably early assignment of these causes for oral argument is based upon a single ground. From page 3 of their brief we quote it in part as follows:

> "The consequence of the constant transportation of such diminishing gas supply out of West Virginia under the protection of the injunctions is, and will be to aggravate the inadequacy of service within West Virginia with its resulting hardship and expense to the public thereof, and * * * tends to defeat the operation of the statute, if valid.
>
> With the approach of the winter of 1921-1922 it is important to the gas consumers of West Virginia to know at the earliest possible time whether the enforcement of the statute can be relied on. * * *."

This suggestion is hardly a valid argument why the plaintiff states should not be given reasonable time to prepare briefs. Rather it suggests the following inquiry:

If after all these years of natural growth and development of the natural gas industry in Interstate Commerce, West Virginia is aggrieved by reason of being deprived, temporarily or otherwise, of the right to enforce this unexpected and unusual statute pursuant to which it would compel

> "A supply of natural gas reasonably adequate for the purposes, whether domestic, industrial or otherwise, for which natural gas is consumed, or desired to be consumed by the public, or any part of the public, within said territory in this state, and for which said consumer or consumers therein shall apply and be ready and willing to make payment at lawful rates,"

what will be the measure of the injury to the property, convenience, comfort, health and life of the domestic consumers alone in the State of Ohio, heretofore and now dependent upon said gas, to the number of 725,000 and representing a population, counting five to each household, of 3,625,000?

Respectfully, but in much earnestness, the State of Ohio suggests at least three months from September 15, 1921, in which to prepare opening brief, and at least one month in which to prepare a reply brief.

Respectfully submitted,

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